

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Billy Lee Lisenby, Jr., #200273,)	C/A No. 5:14-cv-00423-DCN-KDW
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
Warden Tim Riley, Assoc. Warden G.)	
Lane, Assoc. Caldwell, Major J. Parish,)	
Captain B. Tucker, Doctor Bearden,)	
Nurse A. Spencer, Dir. William Byars,)	
C/O Bobo, Lt. Copeland; Mrs. Janice)	
Phillips, Warden Celia Reynolds, Assoc.)	
Warden Washington, Assoc. McKay,)	
Major Seward, Captain Dubois, Lt.)	
Huntley, Mrs. Lecompt, Mrs. Powe, and)	
Mrs. Hough,)	
)	
)	
Defendants.)	
)	

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This matter is before the court on Plaintiff's Motion of Default filed on May 19, 2014. ECF No. 64. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Plaintiff's motion asks the court to enter judgment against Defendants. ECF No. 64. Plaintiff "only seeks proper service of documents, through the U.S. Marshalls [sic] Department of Justice. S.C.D.C.'s General Counsel is hindering [Plaintiff] from doing this." *Id.* Additionally, Plaintiff claims he contacted "the U.S. Department of Justice-U.S. Marshalls in Columbia S.C." because he had not received notification that certain Defendants had been served. *Id.* Plaintiff


claims to have also contacted the U.S. Department of Justice to have subpoenas issued by this court served because the South Carolina Department of Corrections General Counsel's Office told the mailroom not to let Plaintiff send them out. *Id.*

Defendants oppose this Motion contending that their Answer was timely filed on April 17, 2014, and "[a] filed-stamped copy of the Answer, Certificate of Service and Notice of Electronic Filing were served upon the Pro Se Plaintiff by United States mail on April 17, 2014." ECF No. 118. Further, Defendants maintain that "whether or not Plaintiff has received documentation from the U.S. Marshall [sic] provid[ing] proof of service is irrelevant to the issue of default." *Id.* at 2.

Rule 55(a) of the Federal Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). The undersigned has reviewed the docket and finds that Defendants' Answer, which was due on or after April 17, 2014, was timely filed and timely served on Plaintiff on April 17, 2014. ECF No. 66. Accordingly, it is recommended that Plaintiff's Motion of Default, ECF No. 64, be denied.

IT IS SO RECOMMENDED.

June 26, 2014
Florence, South Carolina

A handwritten signature in black ink, reading "Kaymani D. West". The signature is fluid and cursive, with the first name "Kaymani" being more prominent and the last name "West" following in a similar style.

Kaymani D. West
United States Magistrate Judge